IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

WEDNESDAY, THE 17TH OCTOBER 2007 / 25TH ASWINA, 1929

Bail Appl..No. 6310 of 2007()

CRIME NO.25/07 OF TIRUR EXCISE RANGE

PETITIONER/ACCUSED

BABU, AGED 34 YEARS, S/O. KUMARAN,
MAPPALA HOUSE, KAVILAKKAD, PURATHUR,
TIRUR, MALAPPURAM.

BY ADV. SRI.C.V.MANUVILSAN

RESPONDENTS:

STATE OF KERALA, REPRESENTED BY
EXCISE INSPECTOR, TIRUR RANGE,
THROUGH PUBLIC PROSECUTOR, HIGH COURT OF KERALA.

BY PUBLIC PROSECUTORSRI. S.U. NAZAR

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON 17/10/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R. BASANT, J.

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B.A.No. 6310 of 2007

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Dated this the 17th day of October, 2007

O R D E R

Application for anticipatory bail. The petitioner faces allegations under the Kerala Abkari Act. The gravamen of the allegations against the petitioner is that he was allegedly engaged in the activity of illicit sale of liquor on the upper floor of a building when the Excise party detected the offence on 8.10.2007. There is a further allegation that an attempt was made to forcibly go out of the custody of the Excuise officials. A group of persons allegedly made an attempt to get the petitioner out of custody. Allegations under Section 61 of the Abkari Act is also raised. According to the learned counsel for the petitioner, the petitioner is absolutely innocent. It was not coloured arrack, but IMFL. The petitioner wants to rely on Annex.A1 to contend that it was genuine IMFL purchased from the Kerala Beverages Corporation. Investigation is in progress. The petitioner apprehends imminent arrest.

2. The learned Prosecutor opposes the application. He submits that there are no circumstances justifying the invocation of

the discretion under Section 438 Cr.P.C. The petitioner must resort to the ordinary and normal procedure of appearing before the Investigating Officer or the learned Magistrate having jurisdiction and then seek regular bail in the ordinary course, submits the learned Prosecutor.

3. The learned Prosecutor points out that the petitioner was engaged in the illicit sale of liquor. 500 ml. of illicit liquor (coloured arrack) was seized. The contemporaneous seizure mahazar as also the occurrence report show the complicity of the petitioner. There is absolutely nothing to assume that the allegations are false or made with malafide intent, submits the Prosecutor.

4. Having considered all the relevant inputs, I find merit in the opposition raised by the learned Prosecutor. The quantity of illicit liquor seized is small, i.e. 500 ml. But that by itself will not persuade me to invoke the powers under Section 438 Cr.P.C. This I am satisfied is a fit case where the petitioner must resort to the ordinary and normal procedure of appearing before the Investigator or the learned Magistrate having jurisdiction and then seek regular bail in the ordinary course.

5. This application is accordingly dismissed. Needless to say, if the petitioner appears before the Investigating Officer or the learned

Magistrate and applies for bail after giving sufficient prior notice to the Prosecutor in charge of the case, the learned Magistrate must proceed to pass orders on merits, in accordance with law and expeditiously - on the date of surrender itself.

(R. BASANT)
Judge

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